Regulation 17 ultra vires

ARGUMENT

OF

HON. N. A. BELCOURT

BEFORE THE

Supreme Court of Ontario

NOVEMBER 2nd 1914

Imprimerie du "Droit."

English-French Public & Separate Schools

CIRCULAR OF INSTRUCTIONS No. 17

1.—There are only two classes of Primary Schools in Ontario ;—Public Schools and Separate Schools; but, for convenience of reference. the terms English-French is applied to those schools of each class annually designated by the Minister for inspection as provided in 5 below and in which French is a language of instruction and communication as limited in 3 (1) below.

2.—The Regulations and Courses of Study prescribed for the Public Schools, which are not inconsistent with the provisions of this circular, shall hereafter be in force in the English-French schools—Public and Separate Schools with the following modifications ; The Provisions for religious instruction and exercises in Public Schools shall not apply to Separate Schools, and Separate Schools Boards may substitute the Canadian Catholic Readers for the Ontario Public School Readers.

3o. Subject, in the case of each school, to the direction and approval of the Chief Inspector, the following modifications shall also be made in the course of study of the Public and Separate Schools:

THE USE OF FRENCH FOR INSTRUCTION AND COMMUNICATION

(1). In the case of French-speaking pupils, French may be used as the language of instruction and communication ; but such use of French shall not be continued beyond Form 1, excepting that on the approval of the Chief Inspector it may also be used as the language of instruction and communication in the case of pupils beyond Form 1 who are unable to speak and understand the English language.

SPECIAL COURSE IN ENGLISH FOR FRENCH-SPEAKING PUPILS

(2) In the case of French-speaking pupils who are unable to speak and understand the English language well enough for the purposes of instruction, the following provisions are hereby made:

(a) As soon as the pupil enters the school he shall begin the study and the use of the English language.

(b) As soon as the pupil has acquired sufficient facility in the use of the English language he shall take up in that language the course of study as prescribed for the Public and Separate schools.

FRENCH AS A SUBJECT OF STUDY IN PUBLIC AND SEPARATE SCHOOLS

4. In schools where French has hitherto been a subject of study, the Public or the Separate School Board, as the case may be, may provide, under the following conditions, for instruction in French Reading, Grammar, and Composition in Forms 1 to IV [see also provision for Form V in Public School Regulation 14 (5)] in addition to the subjects prescribed for the Public and Separate Schools:

(1) Such instruction in French may be taken only by pupils whose parents or guardians direct that they shall do so and may notwithstanding 3 (1) above the given in the French language.

(2) Such instruction in French shall not interfere with the adequacy of the instruction in England, and the provision for such instruction in French in the timetable of the school shall be subject to the approval and direction of the Chief Inspector and shall not in any day exceed one hour in each class-room, except where the time is increased upon the order of the Chief Inspector.

(3) Where, as permitted above French is a subject of study in a Public or a Separate School the text-books in use during the school year of 1911-1912, in French Reading, Grammar, and Composition remain authorized for use during the School year of 1913-1914.

INSPECTION FOR ENGLISH-FRENCH SCHOOLS

5. For the purpose of inspection, the English-French schools shall be organized into divisions, each division being under the charge of two inspectors.

6. (1) In conducting the work of inspection the Inspectors of a division shall alternately visit each school therein, unless otherwise directed by the Chief Inspector.

(2) Each Inspector shall pay at least 220 half day visits during the year in accordance with the provisions of Public School regulation 20, (2), and it shall be the duty of each Inspector to pay as many more visits than the minimum as the circumstances may demand.

7. Each two Inspectors of a Division shall reside at such centre or centres as may be designated by the Minister.

8. Frequently during the year the two Inspectors of a division shall meet together in order to discuss questions that may arise in their work and to standardize the system of inspection. For the same purposes all the Inspectors shall meet at such times and places as may be designated by the Minister.

9. Each Inspector shall report upon the general condition of all the classes, on the form prescribed by the Minister. This report shall be subject to the approval of the Minister upon the report of the Chief Inspector.

10. If either of the Inspectors of a division finds that any Regulation or Instruction of the Department is not being properly carried out, he shall forthwith report specially on such cases to the Minister.

11. Each Inspector shall forward a copy of his ordinary inspectional report on the prescribed official form to the Minister within one week after the visit.

12. The Chief Inspector of Public and Separate Schools shall be the supervising inspector of the English-French Schools.

13. (1) No teacher shall be granted a certificate to teach in English-French schools who does not possess a knowledge of the English language sufficient to teach the Public and Separate School Course.

(2) No teacher shall remain in office or be appointed in any of said schools who does not possess a knowledge of the English language sufficient to teach the Public and Separate School Course of Study.

LEGISLATIVE GRANTS TO ENGLISH - FRENCH SCHOOLS

14. The Legislative Grants to the English-French schools shall be made on the same conditions as are the grants to the other Public and Separate Schools.

15. On due application from the School Board and on the report of all the Inspectors, approved by the Chief Inspector, an English-French school which is unable to provide the salary necessary to secure a teacher with the aforesaid qualifications shall receive a special grant in order to assist it in doing so.

Department of Education, August 1913.

IN THE SUPREME COURT OF ONTARIO

R. MACKELL ET AL.

vs

THE BOARD OF TRUSTEES of the Roman Catholic Separate Schools of the City of Ottawa.

Argument of the Hon. N. A. Belcourt, K. C., on behalf of the Board.

Regulation No. 17 is illegal because it has no foundation in Ontario School Law.

Regulation 17, which prohibits the use of the French language as the language of instruction and communication in all forms beyond the First Form, was enacted for and has been applied to all the English-French (Bilingual) Schools in the Province of Ontario, whether these Schools are Separate or Public Schools, some of the Bilingual Schools being Separate and some of them Public Schools.

As to Separate Schools, the Regulation is wholly unauthorized, as there is no provision in the Separate School law or elsewhere which authorizes the Minister to make and enforce a regulation prescribing the use of the English language as the only means of instruction and communication in the Separate Schools.

As to Public Schools, Section 80 of Chapter 39 of 1 Edward VII of Statutes of Ontario, which govern Public Schools, prescribes the use of the English language as the only means of instruction and communication in the Public Schools.

It is therefore submitted that with reference to Separate Schools Regulation 17 is without any authority whatever. With reference to Public Schools the authority just quoted, as will be later on argued, is "ultra vires" of the Legislature.

UNCONSTITUTIONALITY OF REGULATION 17

Regulation 17 is "ultra vires" of the Legislature, that is to say, unconstitutional and wholly invalid, in so far as Separate Schools are concerned, because it is contrary to (a) Quebec Act (1774:) (b) Sub-sections 1 and 3 of Section 93 of the B. N. A. Act; (c) Section 133 of the B. N. A. Act; and as to Public Schools because it is contrary to (1) Quebec Act (1774): (2) Section 133 of the B. N. A. Act.

SEPARATE SCHOOLS

Regulation 17 is contrary to Sub-Sections 1 and 3 of Section 93 of the B. N. A. Act.

"93. In and for each Province the Legislature may exclusively "make laws in relation to education, subject and according to the "following provisions:

"1. Nothing in any such law shall affect any Right or Privilege "with respect to Denominational Schools which any Class of Persons "have by law in the Province at the Union.....

3. Where in any Province a System of Separate or Dissentient "Schools exists by law at the Union or is thereafter established by the "Legislature of the Province, an appeal shall lie to the Governor-"General in Council from any act or decision of any Provincial Autho-" rity affecting and Right or Privilege of the Protestant or Roman "Catholic Minority of the Queen's Subjects in relation to Education."

The right to teach and use the French language as the language of instruction and communication in all classes or forms of certain schools, exclusively French Schools before and for some time after Confederation, and English-French Schools thereafter, is a **right or privilege granted to and enjoyed continuously by those schools which were established by or under the law by a class or portion of His Majesty's Subjects, i, e., the Canadians of French origin in the Province of Ontario.**

This right or privilege has been so recognized and sanctioned continually by the Department of Education:

(a) Before Confederation by the establishment and maintenance of French Schools, with French teachers and the use of French text books, the whole with the assistance and co-operation of the Provincial Educational Authorities.

(b) Since Confederation by the maintenance of and assistance to such French Schools, with French teachers and French text books, and the establishment and maintenance of English-French Schools, the appointement of English-French Inspectors and the use of French text books, the whole with the assistance, financial and other, and the co-operation of the Educational authorities of the Province.

The continued existence of these Schools, French, and in some cases exclusively French, before and since Confederation, and thereafter also French and later on English-French, and the constant exercise of the

right or privilege now contented for have been proved in this case in various ways:

(1) By the verbal testimony of Reverend Sisters Demers and Rocque Messrs. L. Perreault, Dr Duhamel, Dr Colquhoun, the present Deputy Minister of Education, and others:

(2) By the Annual Reports, Annals, Archives, Circulars, public documents and correspondence of and in the Department of Education, amongst others, by letters of the Superintendent of Education, the late Dr Ryerson, one of which is the following, now one of the Exhibits in this case:

24th April, 1857.

"Gentlemen,

"I have the honor to state in reply to your letter of the 16th "instant that **as the French is the recognized language of the Country, "as well as the English, it is quite proper and lawful** for the **Trustees "to allow both languages to be targht in their schools to children whose "parents may desire them to learn both.**"

I have the honor to be, Gentlemen,
Your obedient servant

(sgd)**E. Ryerson.**"

Messrs. Donald McLean,
John Cuttenach
Angus McDonell
Trustees No 3 Charlottenburg,
Summerstown

see 1857 No. 2928.

(3) By the grants made from time to time before and since Confederation by the Legislature of Ontario to French Schools, English-French Schools, English-French Model Schools, to the University of Ottawa and others.

(4) By the appointment of French Inspectors in the English-French Schools.

(5) Especially, by the enactment of Regulation 15 and its continued enforcement, which up to the time of issuing Regulation No 17 recognized to the parents the right to demand that the French (or German) language be the language of instruction and communication in the schools attended by their children.

REGULATION 15

(15) In school sections where the French or German language "prevails, the trustees may, in addition to the Course of Study pres-"cribed for Public Schools, require instruction to be given in Read-"ing, Grammar and Composition to such pupils as are directed by "their parents or guardians to study either of these languages, and in "all such cases the authorized text books in French or German shall "be used....."

The Department of Education has perfectly defined the meaning and extent of Regulation 15 in a letter addressed to Reverend Mr. Chaine, Parish Priest of Arnprior, which letter is filed of record as Exhibit 57 and reads as follows:

25th July, 1911.

"Reverend and Dear Sir,—

"I am directed by the Prime Minister, **Sir James Whitney** to "**acknowledge your letter of the 21st, and to state that no change has** "**been made in the School Law or the Department Regulations affect-** "**ing the study of the French language in the Schools.**

"**I am directed to point out that the question is one entirely under** "**the control of the Board of Trustees**.....

"(Sgd) A. H. U. Colquhoun
"Deputy Minister of Education".

Under the provisions of the B. N. A. Act already quoted the privilege or right, when once granted or recognized in respect to denominational schools, which a class of His Majesty's subjects has established under or by law, either before or since Confederation, cannot afterwards be taken away or abridged.

It will be argued that the **privilege or right** must be shown to be **one established by law.** This is not a proper interpretation of the Section. It is not necessary that the right or privilege be one established by law. All that is necessary is that it should be a right or privilege recognized in favor of or granted to **schools established by law.**

It is not the privilege or the right which must itself be granted or recognized by law; it is sufficient if the right or privilege is one recognized in favor of or granted to **schools established by law.** French schools as well as English-French Schools, whether Separate or Public, were clearly **established by law.**

In the context the meaning and spirit of the section in question the words "established by law" are related to and govern exclusively the word "**schools**", not the words **right or privilege.**

See the opinion of the late Chief Justice Richards, the Hon. Edward Blake and the Hon. Mr. Justice Crooks, quoted at page 185 of "Hodgins" History of Separate Schools in Ontario."

Sub-sections 1 and 3 of Section 93 effectively protect any existing right or privilege enjoyed by the minority in any Province in relation to Education.

See opinion above quoted at page 187.

The Sub-sections quoted apply not only to denominational rights but to all other rights recognized to denominational schools, whose existence was sanctioned by law at the Union or which have been established by any Province, such as the use of the French language and French text books, the right to French teachers, and to the use of the French language as the language of instruction and communication, as well as a subject of study.

These sections apply to and protect **any right or privilege in relation to education against any act or decision** of any **Provincial authority affecting such right or privilege where a system of Separate or dissentient schools exists by law at the Union or is thereafter established.**

See opinion of Richards, Blake and Crooks at page 187 "Hodgins" History of Separate Schools in Ontario."

It is manifest that the intention and effect of the two sub-sections are to protect **every right enjoyed by the the minority,** not only denominational rights. The word "denominational" is used merely to designate the class of schools, not to designate or define the kind of right. It has no reference to the nature or kind of right but merely to the schools in respect of which the right is claimed.

See the demand in writing of 3,000 R. C. Ottawa ratepayers that the French language be the language of instruction and communication in the Ottawa English-French (Bilingual) Schools.

This demand is based on and justified by the constant practice and the regulations of the Department before and since Confederation and, more particularly, by Regulation 15 above quoted.

The right or privilege having once been granted, is not susceptible of being withdrawn. If withdrawn, as is clearly sought to be done by Regulation 17, the Courts in their ordinary inherent jurisdiction have the power and duty to determine that Regulation 17 is ultra vires of the Legislature. The parties affected by such a Regulation have two remedies under Section 93, the one just above referred to—a recourse to the Courts—and the other consisting in an appeal to the Governor-in-Council.

See Lefroy's " Canada's Federal System "—(Last Edition p. 647.)

NATURAL LAW AND NATURAL JUSTICE

The right or privilege now contended for is a very important one, such as the Sud-sections in question and the B. N. A. Act generally had in contemplation. It is a very important one because it is a **fundamental** one, based (firstly) on natural law and natural justice and (secondly) on sound pedagogic ethics.

Firstly (a) Regulation 17 violates natural law and natural justice because it seeks to take away the right to have one's money applied to one's own purposes, so long as such is not immoral, in other words, to to have one's own money, paid in by way of schools taxes, applied in accordance with one's own wishes and what one considers one's duty. That is a right, similar to other rights of property, the taking away of which constitutes a violation of natural law.

The Trustees Defendants are trustees duly elected under the School Laws and as such responsible to the ratepayers, for the proper administration of school taxes and for the proper education of the children. The trustees are entrusted by the School Laws with the expenditure of the rates and monies furnished by the ratepayers, the

latter having the right to require in return the quantity and quality of education they wish shall be given to their children.

The ratepayers, as heads of families, have the paramount right and first duty as regards the education of their children. This right and this duty have, with the authority of the law, been delegated to the Boards of Trustees elected by the ratepayers.

No legislative enactment, no regulation or other provision in reference to education, under the powers given to the Legislature by the B. N. A. Act, can abridge the natural right of parents; any enactment which so infringes or limits such right is contrary to natural law.

The parents have the paramount right over the education of their children just as they have the paramount duty, the necessary corollary of such paramount right. Parental authority and parental duty extend to the schools and are to be exercised over the trustees and by the trustees over the teachers employed by the trustees, the latter being responsible to the ratepayers.

Such is the principe which the law of the Province has recognized in creating and organizing Boards of Trustees and providing for the delegation of power and duty by ratepayers, or the heads of families, to school trustees. This is the principle recognized throughout the whole school legislation, both Public and Separate.

See Sections 49-74, inclusively, Public Schools Act.

Also Sections 17-21 and 28-31, inclusively, Separate Schools Act.

It is admitted that the Province, by virtue of the power to legislate on educational matters, may impose conditions for grants out of the Provincial Treasury to schools under its control. But a distinction must always be made between the monies coming from Province generally and going out of the Provincial Treasury, and those supplied by the ratepayers to their school corporations respectively by means of school rates.

While it may be open to the Legislature to make or withhold school grants, and to the Department to determine the manner of payment of the proportion of the grant, and to enact, for instance, that such shall be in proportion to school attendance, it is not open to the Legislature or to the Department to deprive the ratepayers of the use or control of the taxes contributed by them to their School Boards for educational purposes ; nor is it open to the Legislature to impose any other condition or term which would violate natural law.

The School laws, both public and separate, have sanctioned this principle in providing that School Boards may themselves levy and collect their school rates and exercise the remedies which the law provides for their collection, and that without the interference or assistance of the Legislature or Departmental authority. Separate School Boards may compel municipal corporations to collect and pay over to them the school taxes levied by the Boards. In other words the Legislature and the Department may aid and assist by money grants and otherwise in the conduct and control of educational matters and for such purpose may make laws and regulations, but they cannot

supplant the parents or the Board of Trustees, created by law to administer schools and school monies, and to whom the parents have delegated a part of their parental authority.

Sections 47, 72, 89, 90 and 91 Public Schools Act.

Sections 45, 67, 70, 72, 75, 76 Separate Schools Act.

By the creation of School Boards and by reason of the authority given to them to collect and levy rates for school purposes, the Legislature has delegated to such boards the power to control such rates and taxes and to administer and expend the monies represented by such rates.

Secondly (b.) Because the right to speak one's mother tongue is a natural right which every human being has the same right to exercise and in the same way and to the same extent as those other natural rights, for instance, to breathe and to share the light of the sun, to life, to liberty, integrity of body, good name, reputation, etc. The right to use one's own language is one of the attributes of personal freedom and individual liberty which modern civilization has everywhere sanctioned and recognized.

The enactment of Regulation 17 constitutes the only attempt ever made in the British Empire to deprive British subjects of the use of their mother tongue. On the contrary, everywhere else—India, West Indies, South Africa, Jersey, the Isle of Man., Wales, etc., this attribute of freedom and liberty has been not only recognized but the exercise of the right has been sanctioned, promoted, and openly protected.

AUTHORITIES AS TO NATURAL LAW

One of the Rules of construction of Statutes is that it must always be implied that Parliament dit not intend to do a palpable injustice.

27 HALSBURY, P. 149

Statutes which limit common law rights must be expressed in clear and unambiguous terms, especially those which affect status or personal rights or privileges.

27 HALSBURY, P. 151

Another Rule of construction is that legislative enactment must not violate international law or natural laws.

27 HALSBURY, P. 154

A law which is against common right and reason is void.
Kent's Commentaries, Blackstone Edition, pages 447 and following.
Courts are bound to take judicial notice of natural laws.
-18 Annotated Cases, p. 586 and following.

Secondly.—Regulation 17 is contrary to sound pedagogic ethics.

Regulation 17 is, educationally speaking, an absurdity. For instance, in giving a lesson in French to a pupil who understands the French language the teacher would have to teach such pupil his French lesson by using the English language, because under Regulation 17 the language of instruction and communication is compulsorily the English language. That is manifestly a pedagogical heresy. It is utter nonsense.

See Report Dr Merchant, Bilingual Schools, at page 72.

Regulation 17, applied to the teaching of Arithmetic, Geography, History, Drawing or Writing in the manner prescribed by Regulation 17 is quite as nonsensical because, under this Regulation, the use of the French language with the pupil who understands that language best is not to be used in teaching him any of these nonlinguistic subjects.

The absurdity and impracticability of Regulation 17 has been demonstrated by (a) Experts, (whose opinions have been put in evidence) such as Dr MacKay of Nova Scotia, A. R. Davies and Owen Edwards, both of Wales, and others. A quotation from the latter's opinion is typical of the others.

Mr. Owen Edwards in describing the condition of affairs in Wales before the introduction of Welsh as the language of instruction said:

"We thought that the best way of teaching English to a Welsh child would be to make the language and the atmosphere of the school entirely English and to use Welsh, if at all, for the purpose of absolutely necessary explanations. I can but state the result by quoting from a report of a small committee of teachers of great ability and long experience, a report adopted and published by the Anglesey Education Committee. "The infant as he leaves the school is thus described: " . He reads words with which he associates no meaning, and is denied access to the written word which would at once call up ideas and stimulate his intelligence. Thus when he has attained the age of six or seven years, his book tells him nothing; the language he reads he cannot understand, and the language he understands he cannot read."

"That was the typical product of infant schools until a few years ago."

(b) The unanimous Report of the Six Inspectors, three English and three French, appointed by the Department to carry out Regulation 17; the Report is filed as an Exhibit in the case. It contains, among other statements, the following:

"The Inspectors agree that the above (Regulation 17) has not "been effective for the following reasons:

"It was taken to mean that French could not be used as a "language of instruction and communication;"

"It was regarded as an attempt to gradually eliminate the French "language from the English-French Schools."

"The Inspectors agree that the limitation to one hour of the "teacher's time for French, as a subject of study, does not adequately "meet the conditions."

"The Inspectors agree that the provisions respecting French is "not adequate for the Entrance examinations to the English-French "Model Schools."

"The Inspectors agree that the dual system of inspection as at "present constituted has not been effective."

It is therefore submitted that under Sections 1 and 3 of Section 93, B. N. A. Act, the Regulation, in so far as it is made to apply to Separate Schools, is **ultra vires.**

SEPARATE AND PUBLIC SCHOOLS

Subsections 1 and 3 of section 93 apply merely to Separate Schools but the "Quebec Act" (1774) and Section 133 of the B. N. A. Act apply equally and with the same force to both Separate and Public Schools, and they will both be considered in dealing with the "Quebec Act" and Section 133.

Regulation 17, whether applied to Separate or to Public Schools, is clearly ultra vires of Section 133 of the B. N. A. Act. Here it is well to remember that the evidence, both oral and documentary before the Court, concerning the right or privilege to use the French language in the manner above stated, both before and since Confederation, apply to Public as well as Separate Schools.

The Legislature can claim nothing in the way of legislative power except that which has been expressly given to it.

The power to legislate exclusively on educational matters does not imply the power to make any kind of legislation, but only such legislation as may be consistent with natural law and justice and the well established ethics of sound pedagogy, and altogether within and in accordance with the letter and spirit of the B. N. A. Act; such legislation as may be altogether consistent with the provisions of the Act of Confederation.

The provisions of the B. N. A. Act must be interpreted in a broad spirit and so as to meet the conditions existing when it was passed and those which might thereafter arise, not in one Province only, but throughout the whole Dominion. The B. N. A. Act was not made for a day, a generation or a century, but for all time.

The legislature can claim only such power as is expressly given to it. The power concerning education is circumscribed and limited by the remaining provisions of the B. N. A. Act which directly or indirectly affect the matter.

If any Provincial Legislation violates or is inconsistent with any part of the B. N. A. Act it is ultra vires. How can the proscription of either the French or English language in any Province of Canada be consistent with the provision that in all federal matters everywhere in Canada, the French and English languages shall be official, and in some respects obligatory ?

The first part of Section 93 does not give to the legislature the power to decree that either the French or the English language shall

be the only language of the Schools; in other words, the power to banish one or other from the schools.

I Edward VII, Chapter 39, Sec. 80, Sud-sections 1 and 2, is ultra vires because it enacts that the English language shall be the only language of communication and instruction in the Public Schools.

If that Statute is constitutionnally sound it must be because the Provincial Legislatures are given power to legislate exclusively on education (sec. 93). And if Section 93 has such wide meaning then a provision by any of the Provincial Legislatures that French shall be the only means of communication in the schools under the Provincial control would be good and valid.

The prohibition of the French language in the Ontario Schools is as much a legal and constitutional absurdity as the prohibition of the English language by the Legislature of the Province of Quebec in the Schools under the control of that Province. The use of the English language in the Schools of the Province of Quebec has no better or other constitutional foundation than has the use of the French language in the Schools of Ontario.

The power of a Province to legislate on educational and other matters is only a part or parcel of the B. N. A. Act, which is itself a pact or agreement, all the provisions of which are binding on all the parties to it, namely, all the Provinces, and every portion of which must be read together and construed consistently with its various provisions and with the spirit which is manifest throughout. The Provinces are all bound by its provisions.

The prohibition or proscription of the English or French language at any time or place in private or in public, in any part of Canada between any of His Majesty's subjects is manifestly against the spirit and letter of the Act. That would constitute a virtual abolition of the provision making the two languages official. Both are official in every Province for certain purposes. The B. N. A. Act, when enacting that the two languages would be official in certain matters and obligatory in certain other matters did not thereby decree that the use of either of these two languages could be denied or prohibited in other matters, but intended that such use should depend on the conditions and requirements arising at any time in the future in any part of Canada.

The Provincial Legislatures were given the right to legislate exclusively on educational matters, but they were not given power to abridge the use of the English or French language in the Schools. Section 93 gives no such power.

The right to speak and use one's native language is a right or privelege which does not need the sanction of any law and which no law can take away without violating the elementary rules of natural law or justice.

That is the reason why the framers of the B. N. A. Act did not consider it necessary or advisable to formally consecrate or sanction the natural right of Canadians, whether English or French speaking, to use their native language everywhere in Canada.

The natural right of the French-speaking subjects of His Majesty in Canada in the matter of language is entirely different from the right of Germans and all others, except the English-speaking subjects of His Majesty.

This is historically, constitutionally and naturally correct.

It must be remembered that the French-speaking subjects of His Majesty were the discoverers and pioneers of Canada, not of the Province of Quebec alone, as is sometimes assumed, but the whole of Canada from Hudson Bay to Louisiana and from the Atlantic to the Rockies. They implanted on this part of the North American Continent, besides their laws, customs, usages and religion tenets, the French language. As first occupants of the soil, and because they colonized and developed it, they acquired for themselves and their descendants the right, sanctioned by natural law and natural justice, as well as by international law, to the free use everywhere and in all matters of their own language.

The Conquest did not deprive them of that natural right. True the Treaty of Paris and the Capitulations of Quebec and Montreal are silent as to language, but the right to speak one's native language is a right which does not require the sanction of any treaty or of any law. And the right to have or hold anything, the exercise of any right, implies the incidental or corollary right to the means of enjoying that thing or of exercising that right. The natural right to use one's native language implies the incidental right to the means of exercising that right, i. e., the right to be educated in the use of that language.

It is more—it is a right which even the King himself had no right to take away or alter.

See Lord Mansefield's Judgment in the celebrated case of Campbell and Hall (1774)—" He (the King) can make none (law) contrary to **fundamental** principle or law."

As to the Germans and other people who have emigrated, or will later on come to Canada to reside, they have no such right. On the contrary—it is manifest that by coming voluntarily to settle and live in Canada they abandoned, renounced and waived their natural right to speak their native language.

Manifestly this is not the case with the French-Canadian subjects of the King, since they were here before the British Conquest, never surrendered or abandoned their right, since this right was never sought to be taken away by the only authority, which has jurisdiction to deal with it, the Imperial Parliament.

The Legislative power of the Provinces, as well as of the Dominion, is of necessity subservient to that of the Imperial Parliament.

QUEBEC ACT, 1774.

But if a text of law is needed to uphold the right for which I am contending I find a clear and explicit one in Section 8 of the Quebec Act (1774). An Act of the Parliament of Great Britain and Ireland.

" 8. And be it further enacted by the authority aforesaid, that " **all His Majesty's Canadian subjects within the Province of Quebec,** " the religious orders and communities only excepted, **may also hold** " **and enjoy their property and possessions, together with all customs** "**and usages relative thereto, and all other, their civil rights, in as** " **large, ample, and beneficial manner** , as if the said proclamation, " commissions, ordinances, and other acts and instruments, had not " been made, and as may consist with their allegiance to His Majesty, " and subjection to the Crown and Parliament of Great Britain ; **and** " **that in all matters of controversy relative to property and civil** " **rights resort shall be had to the laws of Canada as the rule for the** " **decision of the same** ; and all causes that shall hereafter be insti- " tuted in any of the Courts of Justice to be appointed within and for " the said Province by his Majesty, his heirs and successors, shall, with " respect to such property and rights, be determined agreeably to the " said laws and customs of Canada, until they shall be varied or " altered by any ordinances that shall from time to time be passed " in the said Province by the Governor, Lieutenant-Governor or Com- " mander in chief, for the time being, by and with the advice and " consent of the Legislative Council of the same, to be appointed in " manner here inafter mentionned."

If it is argued that the word " language" is not included in the Section, I reply, and think successfully, that it is obvious that the section manifestly includes the most unimportant chattel. Surely the words "property", "possessions", customs", usages" are wide enough to include language, a much more precious, a more essential and fundamental possession than mere household goods and chattels. It would seem to me utterly unnecessary to further pursue such an evident proposition.

Then the Section in question in unmistakable language preserves to the French-Canadian people their "**laws and civil rights**". By "civil rights" are included all that which the old Romans compiled from the laws of nature and nations: in other words, civil rights manifestly include all natural rights.

See Wharton—Law Lexicon—page 139, 1902 Edition.

6 American & English Encyclopedia of Law, page 68.

How could the civil laws (French laws) printed in the French language, interpreted by French jurisprudence, be preserved and exercised if the French language were denied in their preservation and exercise?

It is to be remembered that by the definition and description contained in the Act itself, the territory affected by the " Quebec Act," the whole of the Province of Ontario, as well as Quebec and many other parts of the present Dominion of Canada, was included.

Whilst the use of the French language was prohibited in the Parliament of Canada by the Act of Union, 1840, which was an Imperial Act, it was restored by the Imperial Act of 1848.

The question of the use of the French language in Canada is one

which can be dealt with only by the Imperial Parliament. It has not at any time been dealt with except by Section 8 of the Quebec Act above recited, an Act which I repeat is in full force all over Canada, and the B. N. A. Act. The B. N. A. Act not only did not repeal or in any way seek to affect Section 8 of the Quebec Act, but it extended its provisions in relation to the use of the French language by enacting Section 133.

The B. N. A. Act did not in any way constitute a surrender or waiver of that right. The right in question, the right to one's language, is a natural right and because it is a natural right, it is an individual right, not a collective one, and it follows that no collective surrender, much less no partial or local surrender, could in any way avail. It was not necessary in order to preserve the use of the French language throughout Canada that the B. N. A. Act should so enact, because the use of the language, based on natural right, guaranted by the Quebec Act, never at any time taken away or surrendered, did not need any constitutional sanction.

Not only was Section 8 never repealed, but it was especialy and formaly continued by the B. N. A. Act.

Sec. 129—B. N. A. Act.

"All laws in force in Canada, Nova Scotia or New Brunswick at "the Union..... shall continue in **Ontario,** Quebec, Nova Scotia and "New Brunswick respectively".

SECTION 133, A PROVISION FOR THE GENERAL ADVANTAGE OF CANADA

Section 133 is a provision in the general interest and for the general advantage of Canada, in the sense and meaning which are attributed to these well known terms when used with reference to the B. N. A. Act. All such provisions wich directly or indirectly are for the general advantage of Canada are binding on all the Provinces, as is well known, and as the jurisprudence and the practice of Parliament have constantly established. Therefore, the power to legislate on educational matters has always been and must continue to remain subject to and limited by Section 133.

The right of the various Legislatures to insist upon the official teaching of the English and the French languages in all schools of the Province cannot be denied. But to prohibit the teaching of either, or the use of either, as a means of instruction and communication in any of the schools in Canada, is to violate the intention and the letter of the B. N. A. Act, because the two languages have been declared official and obligatory.

Whilst the B. N. A. Act (Section 93) gives to the Provinces the exclusive right to legislate on educational matters, it declares by Section 133 that the English and French languages are to be official and in some respects obligatory throughout Canada

Whilst the Provinces are given, for instance, the right to legislate exclusively on "property and civil rights" it is established law and

jurisprudence that the Federal power can legislate on property and civil rights when such legis'ation is a necessary incident of any legislative power given to the Federal authority. Il is submitted that by the enactment of Section 133 the Parliament of Canada has legislative authority to deal with the official character of the two languages—French and English—under Sections 133. If it shou'd be claimed that this would be legislating on educational matters, which subject by Section 93 assigned to the Province, the answer would be under the jurisprudence and practice just referred to, that the Federal power has the right to legislate on all matters affecting the two 'anguages, notwithstanding Section 93, because Section 133 is in effect and in fact a declaration that the use of the two languages are for the general advantage of Canada.

It is therefore clear that all Provincial 'egislation on education is limited or circumscribed by Section 133.

Section 133 must be read into Section 93 and the latter must be interpreted as if it read "Subject to the provision of Section 93, the Provinces shall have power to legislate exclusively in relation to education".

Assuming that Sections 93 and 133 do not stand in the way of Regulation 17 and that the latter is nbt thereby rendered ultra vires and invalid, it is manifest that this regulation is contrary to the spirit and the very letter and constitutes a manifest vio'ation of Section 8 of the "Quebec Act", an Imperial Act, which has been for nearly 150 years and is now in full force in Canada and which is as binding upon the Legislature of the Province of Ontario and the King's subjects in that Province as any other statute-Imperial, Federal of Provincial—affecting the people of this Province.

The provision contained in I Edward VII, Chapter 39, Section 80, by which it is sought to impose the English 'anguage as the sole means of instruction and communication in the Public Schools of Ontario, is also contrary to and in direct violation of said Section 8 of the Quebec Act. It is ultra vires, not only because of the B. N. A. Act, but also because of the Quebec Act.

CONCLUSION

1. AS TO SEPARATE SCHOOLS:

a. Regulation 17 is unauthorized under the law of Ontario, as I Edward VII, Ch. 39, Sec. 80, which prescribes English as the only language of instruction and communication in the schools, applies only to Public Schools.

b. Regulation 17 is ultra vires and invalid because:

(a) Quebec Act—(1774).
(b) Sub-Sections 1 and 3 of Section 93 B. N. A. Act.
(c) Section 133 B. N. A. Act.

II. AS TO PUBLIC SCHOOLS:

Regulation is ultra vires and invalid because:

(a) Quebec Act (1774).
(b) Section 133 B. N. A. Act.